



1 **ORIGINAL**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

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2 COMMISSIONERS

3 KRISTIN K. MAYES, Chairman  
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AZ CORP COMMISSION  
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Arizona Corporation Commission

**DOCKETED**

FEB 05 2009

DOCKETED BY 

7 IN THE MATTER OF THE APPLICATION OF  
8 STI PREPAID, LLC AND DIALAROUND  
9 ENTERPRISES INC. FOR APPROVAL OF A  
10 TRANSFER OF ASSETS AND CERTIFICATE  
11 OF CONVENIENCE AND NECESSITY TO  
12 PROVIDE INTRASTATE  
13 TELECOMMUNICATIONS SERVICES AND  
14 APPROVAL OF TERMINATION OF SERVICE  
15 BY DIALAROUND ENTERPRISES INC.

DOCKET NO. T-20517A-07-0135

DOCKET NO. T-04045A-07-0135

**PROCEDURAL ORDER**

12 **BY THE COMMISSION:**

13 On March 2, 2007, STi Prepaid, LLC ("STi") and Dialaround Enterprises, Inc. ("Dialaround")  
14 (jointly the "Applicants") filed with the Commission a joint application requesting that the  
15 Commission (1) approve the transfer to STi of Dialaround's Certificate of Convenience and  
16 Necessity ("CC&N") to provide resold interexchange services; and (2) approve the termination of  
17 resold long distance service by Dialaround upon transfer of the CC&N. The Applicants stated that  
18 they had, on January 23, 2007, entered into an Asset Purchase and Contribution Agreement  
19 ("Agreement") under which Dialaround agreed to transfer all or substantially all of its assets to STi.  
20 As part of the joint application, STi submitted an application for a CC&N to provide resold long  
21 distance telecommunications services.

22 On April 11, 2007, STi filed an Affidavit of Publication showing that notice of STi's  
23 application for a CC&N had been published in *The Arizona Republic* on March 16, 2007. The notice  
24 did not mention Dialaround.

25 Since the joint application was filed, the Commission's Utilities Division ("Staff") has issued  
26 and STi has responded to seven Letters of Insufficiency and Data Requests. In its response to the  
27 Seventh Data Request, STi provided information related to an Assurance of Voluntary Compliance  
28

1 entered into with the Office of the Attorney General for the State of Florida as a result of an  
2 investigation that has apparently been completed there. STi also provided information concerning  
3 subpoenas issued by the Attorneys General of Illinois and New York;<sup>1</sup> class action lawsuits recently  
4 filed on behalf of customers in the U.S. District Court for the Eastern District of New York, the U.S.  
5 District Court for the District of New Jersey (two consolidated cases), the Superior Court of the State  
6 of California, and the Supreme Court of the State of New York; and lawsuits recently filed by  
7 competitors in the U.S. District Court for the District of New Jersey and the Supreme Court of the  
8 State of New York.<sup>2</sup> The status of each of these matters is unclear from the information provided, but  
9 their recentness suggests that they may all still be pending. Although the Florida Attorney General  
10 investigation was apparently pending at the time STi and Dialaround filed the joint application with  
11 the Commission, it appears that STi did not reveal the pending investigation until specifically asked  
12 about it by Staff.

13 On January 9, 2009, Staff issued a Staff Report recommending that the joint application,  
14 including STi's CC&N application, be approved, subject to conditions, among them a requirement  
15 that Dialaround file, within 30 days after a Decision in this matter, proof of publication of notice  
16 complying with A.A.C. R14-2-1107(B); a requirement that STi comply with standards consistent  
17 with those required in the Florida Assurance of Voluntary Compliance; and a requirement for a  
18 \$10,000 performance bond in addition to the \$10,000 performance bond usually recommended for an  
19 interexchange services reseller that collects prepayments.

20 Because the notice provision of A.A.C. R14-2-1107(B) is intended to allow interested persons  
21 the opportunity to file objections, request a hearing, and/or submit a motion to intervene in a  
22 proceeding, such notice should be completed before a Decision is rendered. As there is no reason to  
23 believe that such notice has been published, it is appropriate to require Dialaround to publish it now.

24 In addition, the recent lawsuit and investigatory activity involving allegations of unfair and  
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26 <sup>1</sup> The subpoena for the State of New York names Samer Tawfik as CEO of STi Phonecard, Inc., and requests documents  
27 related to STi's prepaid calling cards, among others, but expressly relates to an investigation concerning whether an  
28 action should be instituted against CVT Prepaid Solutions, Inc.

<sup>2</sup> The lawsuit filed by competitors in the Supreme Court of the State of New York names Leucadia National  
Corporation, STi's majority owner (through a number of other entities) as defendant, but specifically makes allegations  
concerning STi's activities.

1 deceptive trade practices by STi and its ultimate majority parent Leucadia National Corporation, calls  
 2 into question whether STi is a fit and proper entity to receive a CC&N to provide resold  
 3 interexchange services in Arizona. Thus, it is appropriate to hold a hearing in this matter to delve  
 4 into STi's fitness and properness to receive a CC&N and elicit additional information regarding  
 5 whether granting of the joint application is in the public interest. In addition, it is appropriate to hold  
 6 a prehearing conference in this matter as provided under A.A.C. R14-3-108.

7 IT IS THEREFORE ORDERED that a **prehearing conference** shall be held on **May 4, 2009,**  
 8 **at 9:30 a.m.,** or as soon thereafter as is practicable, in the 2<sup>nd</sup> Floor Conference Room at the  
 9 Commission's offices, 1200 West Washington Street, Phoenix, Arizona. If STi and Dialaround  
 10 desire to attend telephonically rather than in person, STi and Dialaround **shall jointly arrange,** at  
 11 their expense, a bridge teleconference number for the prehearing conference and **file notice of the**  
 12 **bridge teleconference number** with the Commission's Docket Control **by April 27, 2009.**

13 IT IS FURTHER ORDERED that a **hearing** in this matter shall commence on **May 18, 2009,**  
 14 **at 9:30 a.m.,** or as soon thereafter as is practicable, in Hearing Room #1 at the Commission's offices,  
 15 1200 West Washington Street, Phoenix, Arizona 85007.

16 IT IS FURTHER ORDERED that STi and Dialaround shall jointly, **by March 6, 2009,**  
 17 **publish notice** of the joint application and hearing, as stated below, in a newspaper(s) of general  
 18 circulation in every county in Arizona in which Dialaround provides services and/or STi intends to  
 19 provide services.

20 **IN THE MATTER OF THE APPLICATION OF STI PREPAID, LLC**  
 21 **AND DIALAROUND ENTERPRISES INC. FOR APPROVAL OF A**  
 22 **TRANSFER OF ASSETS AND CERTIFICATE OF CONVENIENCE AND**  
 23 **NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS**  
 24 **SERVICES AND APPROVAL OF TERMINATION OF SERVICE BY**  
 25 **DIALAROUND ENTERPRISES INC.**  
 26 **(Docket No. T-20517A-07-0135 et al.)**

27 **Summary**

28 On March 2, 2007, STi Prepaid, LLC ("STi") and Dialaround Enterprises, Inc. ("Dialaround") (jointly the "Applicants") filed with the Commission a joint application requesting that the Arizona Corporation Commission ("Commission") (1) approve the transfer to STi of Dialaround's Certificate of Convenience and Necessity ("CC&N") to provide resold interexchange services; and (2) upon transfer of the CC&N, approve the termination of resold long distance services by Dialaround. The

Applicants stated that they had, on January 23, 2007, entered into an Asset Purchase and Contribution Agreement ("Agreement") under which Dialaround would transfer all or substantially all of its assets to STi. The Applicants assert that if the joint application were granted, after the transfer, Dialaround's existing customers would receive long distance services from STi under the same rates, terms, and conditions currently applied by Dialaround, and Dialaround would cease to provide telecommunications services in Arizona.

The Commission's Utilities Division Staff ("Staff") has recommended approval of the joint application, subject to certain conditions. The Commission will determine the appropriate relief to be granted based on the evidence of record in this matter. The Commission is not bound by the proposals made by the Applicants, Staff, or any intervenors.

#### **How You Can View or Obtain a Copy of the Application and Other Documents**

Copies of the application, the Staff Report, and the other documents filed in this matter are available at the Applicants' offices [COMPANY INSERT ADDRESS HERE]; at the Commission's Docket Control Center at 1200 West Washington, Phoenix, Arizona, for public inspection during regular business hours; and on the Internet via the Commission's website ([www.azcc.gov](http://www.azcc.gov)) using the e-Docket function.

#### **Arizona Corporation Commission Public Hearing Information**

The Commission will hold a hearing in this matter beginning on **May 18, 2009**, at **9:30 a.m.**, in Hearing Room #1 at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. Public comments will be taken on the first day of the hearing. Written public comments may be submitted by mailing a letter referencing Docket No. T-20517A-07-0135 et al. to Arizona Corporation Commission, Consumer Services Section, 1200 West Washington, Phoenix, AZ 85007, or by e-mail. For a form to use and instructions on how to e-mail comments to the Commission, go to [http://www.azcc.gov/divisions/utilities/forms/public\\_comment.pdf](http://www.azcc.gov/divisions/utilities/forms/public_comment.pdf). If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-542-4251.

#### **About Intervention**

Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. If you desire to intervene, you must file a written motion to intervene with the Commission no later than **April 6, 2009**. You must send a copy of the motion to intervene to the Applicants or their counsel and to all parties of record. Your motion to intervene must contain the following:

1. Your name, address, and telephone number and the name, address, and telephone number of any party upon whom service of documents is to be made, if not yourself;
2. A short statement of your interest in the proceeding (e.g., a customer of Dialaround or STi, etc.); and
3. A statement certifying that you have mailed a copy of the motion to intervene to the Applicants or their counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before April 6, 2009. If representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor's obtaining counsel to

1 represent the intervenor. For information about requesting intervention, visit the  
2 Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>.  
3 The granting of intervention, among other things, entitles a party to present sworn  
4 evidence at hearing and to cross-examine other witnesses. However, failure to  
5 intervene will not preclude any interested person or entity from appearing at the  
6 hearing and providing public comment on the application or from filing written  
7 comments in the docket for the case.

8 **ADA/Equal Access Information**

9 The Commission does not discriminate on the basis of disability in admission to its  
10 public meetings. Persons with a disability may request a reasonable accommodation  
11 such as a sign language interpreter, as well as request this document in an alternative  
12 format, by contacting the ADA Coordinator, Shaylin A. Bernal, at [sabernal@azcc.gov](mailto:sabernal@azcc.gov),  
13 voice phone number (602) 542-3931. Requests should be made as early as possible to  
14 allow time to arrange the accommodation.

15 IT IS FURTHER ORDERED that STi and Dialaround shall jointly, **no later than March 23,**  
16 **2009,** file Affidavit/s of Publication with the Commission.

17 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-  
18 105, except that all motions to intervene must be filed on or before **April 6, 2009.**

19 IT IS FURTHER ORDERED that any objections to motions to intervene must be filed on or  
20 before **April 20, 2009.**

21 IT IS FURTHER ORDERED that intervenors shall file specific disagreements/comments, if  
22 any, regarding the joint application and/or Staff Report by **May 4, 2009.**

23 IT IS FURTHER ORDERED that **all parties must comply with Rules 31 and 38 of the**  
24 **Rules of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law**  
25 **and admission *pro hac vice*.**

26 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113—Unauthorized  
27 Communications) applies to this matter and shall remain in effect until the Commission's Decision in  
28 this matter is final and non-appealable.

IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 5<sup>th</sup> day of February, 2009.

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28  
  
SARAH N. HARPRING  
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered  
2 this 5<sup>th</sup> day of February, 2009, to:

3 Chérie Kiser  
4 CAHILL GORDON & REINDEL LLP  
5 1990 K Street, N.W., Suite 950  
6 Washington, D.C. 20006-1181  
7 Attorney for STi Prepaid, LLC and  
8 Dialaround Enterprises Inc.

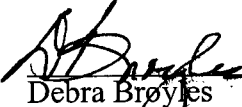
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18 Ernest G. Johnson, Director  
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26 By:

27   
28 Debra Broyles  
Secretary to Sarah N. Harpring